

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Richmond, VA, Employer**

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**Docket No. 08-2436  
Issued: June 23, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 11, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated July 24, 2008 denying appellant's claim for wage-loss compensation between June 8 and 18, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established that she had a period of disability between June 8 and 18, 2007 causally related to her June 9, 2004 employment-related injury.

**FACTUAL HISTORY**

On August 24, 2004 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim alleging that on June 9, 2004 she sustained a hernia in her stomach from lifting and pulling collection tubs from the sidewalk to a truck. She did not stop work. The Office accepted appellant's claim for an inguinal hernia.

On August 20, 2004 appellant sought treatment from Dr. Zelda West Johnson, a family practitioner, who put her on work restrictions and subsequently diagnosed back strain and a ventral hernia. Dr. Johnson advised that appellant could return to work with no lifting over 10 pounds. In an October 15, 2004 report, Dr. Joynita Robinson, an osteopath specializing in family medicine, diagnosed abdominal ventral hernia. She further noted that appellant's carrier duties could be modified to accommodate lifting restrictions. Drs. Johnson and Robinson continued submitting reports regarding appellant's work status.

In duty status reports dated February 14 and November 29, 2005 and June 16, 2006, Dr. Derron Simon, a Board-certified surgeon, diagnosed abdominal ventral hernia and advised that appellant could continue working with lifting restrictions.

On May 1, 2006 appellant accepted an offer of modified assignment from the employing establishment. The duties of the modified assignment consisted of casing mail on various routes within the station. On July 10, 2006 Dr. Leon Dixon, an internist and employing establishment physician, reviewed her current work status at the request of the employing establishment and found that, based on appellant's restrictions, she was under-utilized and could perform other duties without adversely impacting her hernia. He asked Dr. Johnson to indicate whether appellant could perform the specified duties and to indicate any necessary modifications. The record does not indicate that Dr. Johnson responded. In a February 14, 2007 duty status report, a nurse noted that appellant could continue working with lifting restrictions.

On July 10, 2007 appellant filed a claim for wage-loss compensation for the period June 8 to 18, 2007. In an accompanying time analysis form, (CA-7a,) she stated that her reason for leave was because she was in pain. The CA-7a form reflects that appellant worked for four hours on June 8, 2007 and claimed leave without pay for the remaining four hours that day and that she claimed eight hours of leave without pay for each of the other claimed days.

On July 18, 2007 appellant accepted an offer of modified assignment consisting of casing mail on various routes in the station and other duties within appellant's medical limitations. She subsequently submitted an October 9, 2007 report from Dr. Robinson in which she diagnosed abdominal pain, low back pain and fatigue, who also indicated that appellant could return to work on October 11, 2007.

On December 18, 2007 the Office advised appellant that it could not process her claim for compensation beginning June 8, 2007 as there was no medical evidence supporting total disability for the period claimed. It allowed appellant 30 days to submit additional evidence.

Appellant submitted a June 8, 2007 treatment note from a physician's assistant diagnosing a ventral hernia. The physician's assistant indicated that her disability began on June 8, 2008. The report also indicated that the light-duty restrictions and full-duty release date were "per specialist." Appellant also submitted duty status reports from Dr. Robinson dated October 9, 2007 and July 16, 2008 diagnosing abdominal ventral hernia and low back pain. Dr. Robinson indicated that appellant had no other disabling conditions. The reports also noted that appellant could work with restrictions.

By decision dated July 24, 2008, the Office denied appellant's wage-loss compensation for the period June 8 to 18, 2007 finding that the medical evidence did not demonstrate that the accepted medical condition caused or affected a total disability for the claimed period.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of her claim, including that any specific condition or disability for which she claims wage-loss compensation is causally related to the employment injury.<sup>2</sup>

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury. Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>3</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>4</sup> The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>6</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Tammy Medley*, 55 ECAB 182 (2003).

<sup>3</sup> *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

<sup>4</sup> *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); *see Huie Lee Goal*, 1 ECAB 180,182 (1948).

<sup>5</sup> *G.T.*, *supra* note 4; *see Fereidoon Kharabi*, *supra* note 3.

<sup>6</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

## ANALYSIS

The Office accepted that appellant sustained an inguinal hernia. Appellant claims that this injury caused her total disability for employment from June 8 to 18, 2007. However, her claim is not supported by the medical evidence of record. The record indicates that appellant was working restricted duty before and after the claimed period of disability. There are no medical reports from a physician indicating that the accepted employment injury caused any total disability from June 8 to 18, 2007.

Appellant submitted a June 8, 2007, statement from a physician's assistant diagnosing a ventral hernia and indicating that her disability began that day. However, the Board has noted that a physician's assistant is not a physician as defined under the statute and therefore any report from such individual does not constitute competent medical evidence, which can only be given by a qualified physician.<sup>7</sup> Thus, this report and other reports from physician's assistants cannot be considered as medical evidence. Likewise, the record contains reports and notes from nurses. These documents also are not considered competent medical evidence as nurses are not physicians under the terms of the Act and their opinions are of no probative value.<sup>8</sup> Consequently, evidence submitted from physician's assistants and nurses are insufficient to establish appellant's claim.

The record also contains medical reports from physicians but these reports are insufficient to establish appellant's claim because they do not provide any specific support that her accepted hernia condition caused or aggravated any total disability from June 8 to 18, 2007. For example, in duty status reports dated October 9, 2007 and July 16, 2008, Dr. Robinson diagnosed abdominal ventral hernia and low back pain. She also advised that appellant could work within restrictions. As neither of these reports indicates that appellant was disabled during the claimed period of disability between June 8 and 18, 2007, due to her accepted hernia condition, these reports are of little probative value. Additionally, other reports from Dr. Robinson predate appellant's claimed period of disability and therefore do not support her claim.

The medical reports from Drs. Johnson and Simon are also insufficient to meet appellant's burden of proof. Each of these reports predate the claimed period of disability and none indicate that appellant sustained any period of total disability due to her accepted hernia condition. There is no medical evidence of record from a physician that specifically addresses whether appellant had employment-related disability during the claimed period June 8 to 18, 2007.

Upon filing her claim for wage-loss compensation, appellant indicated in her time analysis form that she stopped work due to pain. However, the record contains no objective medical evidence supporting a finding of total disability, for the period claimed, causally related

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<sup>7</sup> See *George H. Clark*, 56 ECAB 162 (2004). See 5 U.S.C. § 8101(2) (defining the term "physician"); see also *Charley V.B. Harley*, 2 ECAB 208 (1949) (the Board held that medical opinion, in general, can only be given by a qualified physician).

<sup>8</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005).

to the accepted hernia condition. As noted, for each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury. She has not provided such medical evidence supporting her claim for disability between June 8 and 18, 2007.

Consequently, the medical evidence is insufficient to establish that appellant was totally disabled between June 8 and 18, 2007 causally related to the accepted injury.

### **CONCLUSION**

The Board finds that appellant has not established that she had a period of disability between June 8 and 18, 2007 causally related to her June 9, 2004 employment-related injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated July 24, 2008 is affirmed.

Issued: June 23, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board